

P-488/EM-89-284DENYING REQUEST

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of a Request for an
Administrative Ruling

ISSUE DATE: September 28, 1989

DOCKET NO. P-488/EM-89-284

ORDER DENYING REQUEST

PROCEDURAL HISTORY

On April 1, 1988 the Minnesota Public Utilities Commission (the Commission) issued its Order Partially Suspending Tariff, Initiating Investigation, and Limiting Conference Call Referrals to Authorized Providers in In the Matter of Northwestern Bell Discontinuing to Offer Local and IntraLATA Operator Handled Conference Service, Docket No. P-421/M-87-815, 816. Among other things, that Order required Northwestern Bell Telephone Company (NWB) to refer conference call customers to only those conference call providers who had been authorized by the Commission to do business in Minnesota.

At that time, AT&T and NWB were the only companies authorized by the Commission to provide conference call services in Minnesota, although there were other providers. After the April 1, 1988 Order NWB referred all conference calls to AT&T.

On May 31, 1988, A Business Conference Call, Inc. (ABC or the Company) elected under Minn. Stat. § 237.58 to be regulated by Minn. Stat. §§ 237.59, 237.60 and 237.62 (1988). This election enabled ABC to register with the Commission as a provider of conference call services and become eligible for NWB's conference call referrals.

On January 24, 1989, the Commission issued its Order Eliminating Prohibition Against Referrals to Conference Call Providers Not Authorized to Do Business in Minnesota and Eliminating Referral Process in Six Months in Docket No. P-421/M-87-815, 816. That Order modified the April 1, 1988 Order and eliminated the prohibition against NWB referring customers seeking conference call services to service providers who had not received Commission authorization to do business in Minnesota.

The Commission reasoned that many customers seeking referrals to conference call providers intended to place interstate or international calls and that requiring these providers to be authorized

in Minnesota was unfair both to non-authorized companies and consumers who should receive the most complete information possible regarding the availability of conference call services. The Commission stated that it would continue to address issues regarding the price, quality, and reliability of conference calls services in In the Matter of the Investigation by the Minnesota Public Utilities Commission Into the Provision of Telephone Conference Call Services, Docket No. P-999/C-88-310 and through the consumer complaint process.

On May 2, 1989, A Business Conference Call, Inc. (ABC or the Company) filed a request with the Minnesota Public Utilities Commission (the Commission) for an administrative ruling which would allow ABC to conduct its business without an election of coverage or a certificate of authority. In its request for an administrative ruling, ABC argued that businesses are generally no longer required to obtain authorization from the Commission to conduct incidental intrastate business in Minnesota. The Company cited the Commission's December 23, 1988 Order Dismissing Complaints against DeraCom, Inc. and Darome Connection, Inc. in In the Matter of the Investigation by the Minnesota Public Utilities Commission Into the Provision of Telephone Conference Call Services, Docket No. P-999/C-88-310 (DeraCom-Darome decision).

On July 27, 1989, the Department of Public Service (DPS or the Department) recommended that the Commission deny ABC's request to conduct its business without an election of coverage or a certificate of authority.

In a letter dated August 7, 1989, the Company disputed the DPS recommendation. The DPS filed a response and renewed its original recommendation.

The Commission met on August 29, 1989 to consider this matter.

FINDINGS AND CONCLUSIONS

The Commission must decide whether to grant ABC's request to withdraw its election under Minn. Stat. § 237.58 to be governed by Minn. Stat. §§ 237.59, 237.60, and 237.62 and conduct its business without being subject to the Commission's jurisdiction.

Withdrawal of Election

On May 31, 1988, ABC elected to be subject to the lessened regulation of Minn. Stat. §§ 237.58 et seq. Among other things, those statutes allow a company to implement rate changes on an expedited basis if the services involved are subject to emerging or effective competition. Conference calling services are group access bridge services which are subject to emerging competition under Minn. Stat. § 237.59.

The Commission notes that Minn. Stat. § 237.58, subd. 1, as recently amended in Act of May 8, 1989, ch. 74, sec. 8, 1989 Minn. Laws 167 provides:

This section and sections 237.59, 237.60, subdivisions 1, 2, and 5; 237.62; and section 18 do not apply to a telephone company unless the company notifies the commission in writing of its decision to be subject to all of those sections. The company may not revoke its decision to be subject to those sections before January 1, 1994.
(Emphasis supplied.)

The plain language of the statute prohibits ABC from revoking its election. The Commission will deny the Company's request to withdraw its election.

Authorization to Offer Services in Minnesota

ABC argued that in the DeraCom-Darome decision, the Commission had ruled that businesses are generally no longer required to obtain authorization from the Commission to conduct incidental intrastate business in Minnesota.

The Commission finds that the Company has misapplied the DeraCom-Darome decision to the facts presented here. In that decision, the Commission excused two conference call providers whose business is overwhelmingly interstate and international in character from complying with Minnesota regulatory requirements. The Commission found that Darome did not solicit business in Minnesota and that it had handled only seven intrastate calls during the first quarter of 1988. The Commission further noted that DeraCom believed that it had never handled an intrastate call.

Nonetheless, the Commission stated that the Department would continue to monitor the provision of conference call services to Minnesota residents and would promptly bring to the Commission's attention any facts suggesting that either company should be required to comply with Minnesota regulatory requirements.

The facts are different here. Through its election under Minn. Stat. § 237.58, ABC admitted that the Commission has jurisdiction over its activities in Minnesota. Further, the amount of business the Company does here justifies compliance with Minnesota's regulatory requirements.

The Commission's review of ABC's intrastate gross revenues shows that they are not de minimus as was true for DeraCom and Darome. The Commission also believes that state regulation of ABC

is not unduly burdensome to the Company. The level of regulation for ABC is minimal. The Company must file an annual report and must provide revenue data used to calculate its annual assessment under Minn. Stat. § 237.295 (1988). The Commission concludes that the Company must be authorized by this Commission to operate in Minnesota and that ABC must comply with the requirements of Minn. Stat. Chap. 237.

ORDER

1. The request of A Business Conference Call, Inc. for an administrative ruling allowing it to conduct its business in Minnesota without a certificate of authority or an election of coverage is hereby denied.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

(S E A L)